

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

**IN RE INTEL CORP. MICROPROCESSOR
LITIGATION**

MDL Docket No. 05-1717-JJF

This Pleading Pertains to:

PHIL PAUL, on behalf of himself
and all others similarly situated,

Plaintiffs,

vs.

INTEL CORPORATION,

Defendant.

Case No. 05-485-JJF

**THE NATIONAL PLAINTIFFS GROUP'S MEMORANDUM
IN SUPPORT OF THEIR MOTION FOR LEAVE
TO FILE THEIR CONSOLIDATED COMPLAINT**

The plaintiffs comprising the National Plaintiffs Group,¹ by their counsel, respectfully submit this memorandum in support of their Motion for Leave to File Their Consolidated Complaint (the “Leave Motion”). The Leave Motion was necessitated by the refusal of Court-appointed Interim Class Counsel to include the plaintiffs comprising the National Plaintiffs’ Group in their consolidated complaint, filed with the Court on April 28, 2006 (Document No. 59), along with the claims those plaintiffs have asserted.

Interim Class Counsel’s unilateral decision to drop the plaintiffs comprising the National Plaintiffs Group and their claims from their consolidated pleading directly contravenes the purpose and intent of Rule 23(g) of the Federal Rules of Civil Procedure (“Fed. R. Civ. P.” or

¹ A list of the plaintiffs comprising the National Plaintiffs Group and the captions of their pending actions are set forth in Footnote 1 to the National Plaintiff Group’s Motion for Leave to File Their Consolidated Complaint, filed contemporaneously herewith.

“Rule ____”); Fed. R. Civ. P. 21, which mandates that parties may not be dropped from an action without court order granting a motion requesting such relief; the Rules of Procedure of the Judicial Panel on Multidistrict Litigation; and this Court’s April 18, 2006 Memorandum Order,

These actions were transferred to this Court following proceedings before the Judicial Panel on Multidistrict Litigation (“JPML”). All claims originally brought in this District and in other Districts were assigned to this Court by the JPML.² Nevertheless, without motion or permission of this Court, Interim Class Counsel has filed a consolidated complaint, with one of its purposes being to dismiss certain plaintiffs and their claims without the consent of those parties or Court Order permitting them to do so.

In its April 18, 2006 Memorandum Order appointing interim class counsel here, the Court – after, *inter alia*, voicing its concerns about the inefficiencies and potential for abuse inherent in multi-firm leadership structures – ordered that all purchaser antitrust actions pending against Intel in the District of Delaware be consolidated and that interim class counsel was charged with, *inter alia*, overseeing all of those actions for the benefit of the plaintiffs named therein.

The Court’s Memorandum Order is consistent with Rule 23(g)’s mandate that Interim Class Counsel is required to “fairly and adequately represent the interests of the class.” Rule 23(g)(1)(B). The scope of this obligation is confirmed by the Advisory Committee Notes to Rule 23, which state, in pertinent part, that “[w]hether or not formally designated interim counsel, an

² Rule 1.4 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation confirms the JPML’s expectation that the plaintiffs and claims asserted in transferred actions are to proceed unabated in the transferee court, mandating that “[a]ny attorney of record in any action transferred under Section 1407 may continue to represent his or her client in any district court of the United States to which such action is transferred” – which presupposes the continued pendency of those transferred actions and claims in the transferee court.

attorney who acts on behalf of the class before certification ***must act in the best interests of the class as a whole.***” (emphasis added).

Interim Class Counsel here, however, have failed to comply with their obligations to protect and represent the interests and claims of all plaintiffs in the consolidated actions, thereby necessitating the National Plaintiffs Group’s Leave Motion. Specifically, rather than represent the interests and claims of all plaintiffs in the consolidated actions, Interim Class Counsel unilaterally expelled the plaintiffs comprising the National Plaintiffs Group from the consolidated action and refused to include their state law claims and proposed state law classes in their consolidated complaint – despite being specifically instructed by counsel for the National Plaintiffs Group that they were not authorized to do so.³

In an effort to respect the Court’s interim class counsel ruling and to work within the parameters thereof, the National Plaintiffs Group – at Interim Class Counsel’s request and invitation – reviewed a draft version of Interim Class Counsel’s consolidated complaint and returned detailed comments and proposed revisions designed to preserve Interim Class Counsel’s proffered theory of the case, while pleading alternative state class claims to confront and overcome the serious standing problems the National Plaintiffs Group believes continues to plague Interim Class Counsel’s pleadings.⁴ Interim Class Counsel rejected the National

³ In an effort to present this issue to the Court in a streamlined manner, the National Plaintiffs Group has not appended to this memorandum the emailed correspondence between Fred Taylor Isquith of Wolf Haldenstein Adler Freeman & Herz, an attorney representing the National Plaintiffs Group, and Steve Berman of Hagens Berman LLP, one of the firms comprising Interim Class Counsel here. Should the Court wish to review that email correspondence, counsel for the National Plaintiffs Group is ready, willing, and able to proffer it to the Court.

⁴ While this is neither the time nor the place to debate the merits of the claims presented to the Court by Interim Class Counsel in their consolidated complaint, one of the defects that may permeate that consolidated complaint is that the plaintiffs named in that pleading may not have standing to prosecute those claims. As the National Plaintiffs Group explained in its earlier filings before the Court, while the National Plaintiffs Group asserts claims on behalf of putative class members of separately-pleaded state classes, from states permitting indirect purchaser litigation, under the statutes of those states in which the

Plaintiffs Group's suggestions and unilaterally – without motion or Court Order⁵ – expelled the plaintiffs comprising the National Plaintiffs Group, as well as all of their claims, from the consolidated action. By abandoning their duties and improperly and without authorization discarding parties and claims from the consolidated action, Interim Class Counsel have left the plaintiffs comprising the National Plaintiffs Group with no alternative other than to seek relief from the Court to enable them to protect their interests and preserve their claims and the claims of the 24 individual state law classes they respectively seek to represent – and which are in no way protected or included by Interim Class Counsel in their consolidated pleading.

CONCLUSION

For all of the foregoing reasons, the plaintiffs comprising the National Plaintiffs Group respectfully request that the Court grant their motion and grant them leave to file their Consolidated Complaint.

DATED: May 2, 2006

BIGGS AND BATTAGLIA

/s/ Robert D. Goldberg
 Robert D. Goldberg (ID #631)
 921 North Orange Street
 P.O. Box 1489
 Wilmington, Delaware 19899
 Telephone: (302) 655-9677
 Facsimile: (302) 655-7924

***Proposed Liaison Counsel for the
 National Plaintiffs Group***

representative plaintiffs reside, Interim Class Counsel asserts claims on behalf of nationwide classes under statutes in states where the representative plaintiffs do not reside, did not purchase their Intel-equipped computers, did not suffer antitrust or other injury – and, in many instances, on behalf of plaintiffs from states that prohibit indirect purchaser actions.

⁵ Indeed, Fed. R. Civ. P. 21 states, in pertinent part, “[p]arties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just.” It is inarguable that no such motion practice or Court order has occurred here. Correspondingly, in their consolidated complaint, Interim Class Counsel appears to have added three additional plaintiffs – Elizabeth Bruderle Baran, Rob Marshall, dba Marshall Realty, and Francis H. Slattery IV – without leave of court permitting them to do so, thereby violating Fed. R. Civ. P. 19 as well.

WOLF HALDENSTEIN ADLER
FREEMAN & HERZ LLP
Fred Taylor Isquith
270 Madison Avenue
New York, New York 10016
Telephone: (212) 545-4600
Facsimile: (212) 545-4653

WOLF HALDENSTEIN ADLER
FREEMAN & HERZ LLC
Mary Jane Edelstein Fait
Adam J. Levitt
55 West Monroe Street, Suite 1111
Chicago, Illinois 60603
Telephone: (312) 984-0000
Facsimile: (312) 984-0001

WOLF HALDENSTEIN ADLER
FREEMAN & HERZ LLP
Francis M. Gregorek
Betsy C. Manifold
Francis A. Bottini, Jr.
Rachele R. Rickert
750 B Street, Suite 2770
San Diego, California 92101
Telephone: (619) 239-4599
Facsimile: (619) 234-4599

Counsel for the National Plaintiffs Group

Ann Lugbill
2406 Auburn Avenue
Cincinnati, Ohio 45219
Tel: (513) 784-1280
Fax: (513) 784-1449

Counsel for Mary Reeder

Brandon N. Voelker
28 West 5th Street
Covington, Kentucky 41011
Tel: (859) 491-5551
Fax: (859) 491-0187

Counsel for Mary Reeder

Gene Summerlin
OGBORN, SUMMERLIN
& OGBORN, PC
210 Windsor Place
330 South Tenth Street

Lincoln, Nebraska 68508

Tel: (402) 434-8040

Fax: (402) 434-8044

Counsel for JWRE, Inc., Chrystal Moeller, and Caresse Harms

Robert J. Sharkey

VANDERVOORT, CHRIST
& FISHER, PC

Fifth Third Bank Building, Suite 312

67 West Michigan Avenue

Battle Creek, Michigan 49017

Tel: (269) 965-7000

Fax: (269) 965-0646

Counsel for Robert J. Rainwater

Richard A. Lockridge

Robert K. Shelquist

LOCKRIDGE GRINDAL

NAUEN P.L.L.P.

100 Washington Avenue South, Suite 2200

Minneapolis, Minnesota 55401

Tel: (612) 339-6900

Fax: (612) 339-0981

Counsel for Kathy Ann Chapman,

Nancy Bjork, Ron Terranova, and Carl Yamaguchi

Noah Golden-Krasner

LAW OFFICES OF NOAH

GOLDEN-KRASNER

354 West Main Street

Madison, Wisconsin 53703

Tel: (608) 441-8924

Fax: (608) 442-9494

Counsel for Sonia Yaco

Tim Semelroth

RICCOLO & SEMELROTH, PC

425 Second St. SE, Ste 1140

Cedar Rapids, Iowa 52401

Tel: (319) 365-9200

Fax: (319) 365-1114

Counsel for Ryan James Volden

Robert J. Rubin, PA

RUBIN & STROUT, PA

480 West Street

Rockport, Maine 04856

Tel: (207) 236-8260

Fax: (207) 236-4981

Counsel for Melissa Goeke

Charles F. Speer

Donnamarie Landsberg

SPEER LAW FIRM, PC

104 W. 9th Street, Suite 305

Kansas City, Missouri 64105

Tel: (816) 472-3560

Fax: (816) 421-2150

Counsel for Jeff Vaught

Dennis J. Johnson
JOHNSON & PERKINSON
1690 Williston Road
South Burlington, Vermont 05403
Tel: (802) 862-0030
Fax: (802) 862-0060
*Counsel for Ficor Acquisition Co., LLC,
dba Mills & Greer Sporting Goods*

Peter G. Gruber
PETER G. GRUBER, P.A.
One Datran Center, Suite 910
9100 South Dadeland Boulevard
Miami, Florida 33156
Tel: (305) 670-1010
Fax: (305) 670-0228
Counsel for Maria Pilar Salgado

Nancy Freeman Gans
MOULTON & GANS, P.C.
33 Broad Street, Suite 1100
Boston, Massachusetts 02109
Tel: (617) 369-7979
Fax: (617) 369-7980
Counsel for Paula Nardella

Richard J.R. Raleigh Jr.
WILMER & LEE, P.A.
100 Washington Street, Suite 200
Huntsville, Alabama 35801
Tel: (256) 533-0202
Fax: (256) 533-0302
Counsel for Nancy Wolfe

Jayne Goldstein
MAGER & GOLDSTEIN LLP
2825 University Drive, Suite 350
Coral Springs, Florida 33065
Tel: (954) 341-0844
Fax: (954) 341-0855
*Counsel for Leslie March, Virginia Deering,
and Giacobbe-Fritz Fine Art LLC*

Carol A. Mager
MAGER & GOLDSTEIN LLP
One Liberty Place, 21st Floor
Philadelphia, Pennsylvania 19103
Tel: (215) 640-3280
Fax: (215) 640-3281
Counsel for Leslie March, Virginia Deering, and Giacobbe-Fritz Fine Art LLC

Van Bunch
BONNETT, FAIRBOURN, FRIEDMAN
& BALINT, PC
57 Carriage Hill
Signal Mountain, Tennessee 37377
Tel: (423) 886-9736
Counsel for Tom Hobbs

Barry C. Blackburn
THE BLACKBURN LAW FIRM, PLLC
6933 Crumpler Boulevard, Suite B
P.O. Box 70
Olive Branch, Mississippi
Tel: (662) 895-6116
Fax: (662) 895-6121
Counsel for Bill Richards

Greg McEwen
THE MCEWEN LAW FIRM, P.L.L.C.
5850 Blackshire Path
Inver Grove Heights, Minnesota 55076
Tel: (651) 224-3833
Fax: (651) 223-5790
Counsel for Ron Terranova

Jerold T. Matayoshi
FUKUNAGA MATAYOSHI HERSEY
& CHING, LLP
Davies Pacific Center, Suite 1200
841 Bishop Street
Honolulu, Hawaii 96813
Tel: (808) 533-4300
Fax: (808) 531-7585
Counsel for Carl Yamaguchi

Patrick J. Murphy
MURPHY, SMALL & ASSOCIATES
1100 East Bridger Avenue
Las Vegas, Nevada 89101
Tel: (702) 259-4600
Fax: (702) 259-4748

Counsel for Ron Terranova

David Pastor
GILMAN AND PASTOR, L.L.P
60 State Street, 37th Floor
Boston, Massachusetts 02109
Tel: (617) 742-9700
Fax: (617) 742-9701

Counsel for David Kurzman

9420